

AGENDA ITEM

V-A MARCH 12, 2015

DATE: February 26, 2015

TO: Members, Stakeholders and Access to Justice Committee

FROM: Pam Wilson, Senior Director, Office of Education
Ruben Reyes, Chair, Committee on Group Insurance Programs
Randall Miller, Chair, Committee on Professional Liability Insurance

SUBJECT: Committee on Professional Liability Insurance (COPLI) 2014 Annual Report

BACKGROUND

The committee was established by Board resolution in July 1990. Its purpose is to: Oversee a professional liability program that has congruent goals of providing attorneys with insurance coverage and clients with recourse for malpractice. COPLI should also explore and pursue programs and strategies consistent with the economic viability of the program, to make professional liability insurance available to as many California attorneys as possible. COPLI oversees and reports to the Board of Trustees and/or its designated board standing committee on all aspects of the State Bar approved Professional Liability Insurance Program including, but not limited to, the following:

1. Interact with the Program Administrator and the Underwriter. Make recommendations, consider premium rates, benefits, limitations, exclusions and other contract provisions in relation to needs of the members of the State Bar generally as well as those provisions necessary to maintain the economic viability and stability of the program;
2. Oversee and interact with the Program Administrator to ensure the broadest dissemination of information regarding the program, the ease of members in applying for the program and other such steps as may be necessary or appropriate to precipitate program growth consistent with economic stability of the program;
3. Interact with both the Program Administrator and the Underwriter to anticipate and implement program changes, coverages, specialty policies, and such matters as may respond to the needs of California's practicing attorneys and otherwise precipitate additional programs growth;
4. Undertake such activities as may be necessary or appropriate to advocate with the underwriter on behalf of attorneys desiring to be included in the endorsed program and/or those who may be declined etc.;
5. Conduct such studies as may be necessary or appropriate to identify causes, frequency, and severity of legal malpractice claims; interact with the carrier to

both precipitate and assess satisfaction levels of program members following initiation of legal malpractice claims;

6. Design, schedule, and conduct malpractice avoidance education programs available to attorneys throughout the state which qualify for MCLE credit for program members, develop and update materials on malpractice prevention.
7. Engage in audits and reviews necessary to ensure both the economic viability of the program and the availability thereof to the broadest range of California attorneys. Propose such changes in the program structure, etc., as may be necessary or appropriate to accomplish such goals;
8. Take steps to identify those aspects of the Professional Liability Insurance Program that may generate additional non-dues revenue.
9. Assist the Office of General Counsel in providing legal advice to the Board of Trustees with respect to all of the foregoing items.
10. Conduct an annual orientation session for new members of the Committee, Board members, State Bar staff, and the Executive Director on all of the above listed aspects of Committee oversight of the State Bar sponsored professional liability program.
11. Comply with all reporting and planning requirements of the Board of Trustees approved Strategic and Operational plans. Comply with the annual work plan requirement for all Board of Trustees' committees.
12. Ensure that all the above listed advisory responsibilities, 1-11, are conducted in consultation with State Bar of California staff designated by the Executive Director.

2014 YEAR-END ASSESSMENT

The following is a summary of COPLI's activities in 2014 that furthered its charge:

Professional Liability Insurance Program (PLI)

The committee held four meetings, including an overnight planning session in September 2014.

The committee performed a full actuarial review of the PLI program to evaluate the program's loss ratio and profitability. Established originally in 1990, COPLI continues to ensure access to a viable market for professional liability insurance, sustainable over time. COPLI members actively respond, interact, and serve as Program liaison for member needs and suggestions about the Program, including scope of coverage, practices covered, application rejections, and policy declinations.

Professional Liability Insurance -- New Admittee Program

COPLI continued oversight of the Professional Liability Insurance New Admittee Program. Now in its sixth year, the New Admittee program has provided early access into the market at an attractive cost for starting attorneys and is likely to foster continuity of coverage from the onset of their careers.

Mediators and Arbitrators Professional Liability Insurance

In August 2009, The Department of Insurance granted approval for us to offer this sponsored product as a subset of our existing PLI program through Arch and Marsh. The product, intended for judges was introduced to the membership at the State Bar Annual Meeting in Sept 2009, with a formal marketing launch in January 2010. The program began placing policies in 2010 and continues with the help of a series of cross marketing campaigns in 2014.

Professional Liability Insurance -- Data Breach Endorsement

In 2014, COPLI approved the addition of a Lawyers Professional Liability Insurance policy endorsement providing up to \$25,000 in coverage for the expense of remediation and mitigation in the event an insured suffers a data breach. The Endorsement also provides for the services of an expert coach to navigate applicable legal requirements.

Market Review

COPLI continued to monitor the market to insure the availability of coverage to all members and adequacy of policy features.

Education

In 2014, the Education Subcommittee conducted two live malpractice prevention seminars for MCLE credit, one at the State Bar Solo and Small Firm Summit and the other at the State Bar Annual Meeting. In addition, COPLI has participated in CYLA's 10-Minute Mentor program and began an Eight (8) program webinar series offered through the State Bar's Online CLE site. Consistent with its charge, the Committee works to protect the public by educating attorneys on the need to be insured, ensuring compliance with applicable ethical standards and the standard of care, and avoiding malpractice claims.

In addition to these courses, COPLI members continue to contribute to the insurance portion of the State Bar's "Opening a Law Office" publication.

Broker Agreement

The State Bar of California's agreement with our managing broker, Marsh was solidified and made effective July 2012 for a period of 5 years. In late 2013, the Bar in conjunction with Marsh successfully secured increased benefits for all participating bar members. In addition to their Professional Liability coverage, we now offer 25 hours of CLE available at no cost to the policyholder, a 50% discount on both the Solo Summit and Annual meeting, as well as a free Section Membership to all policyholders with no direct increase in premium. Now completing our first year of this offering, we continue to monitor the effectiveness of these new benefits with our attorneys.

As of January 2014, Marsh, the association arm of Marsh & McLennan was absorbed into their sister company, Mercer. This in turn produced a management change in the oversight of the State Bar relationship and the day-to-day administration of the State Bar sponsored Professional Liability Insurance Program. State Bar staff and COPLI leadership has worked closely over the past year to clearly communicate expectations

to Mercer and to create metrics for meeting them in a timely manner. Today, COPLI continues to work with this new team to ensure there is no disruption to our PLI offering and that Mercer continues to uphold the agreement originally entered into by Marsh in 2012. Recent underwriting statistics indicate that the Marsh/Mercer restructuring has not impacted program performance.

Disclosure of Professional Liability Insurance

In 2014 we continued the initiative, started in 2008, concerning California professional liability insurance disclosure requirements. Members of the committee participated in the vetting of the proposed new rule 3-410 of the California Rules of Professional Conduct that was adopted by the Board of Governors in May 2008 for submission to the Supreme Court. The Supreme Court passed the rule on August 26, 2009 with an effective date of January 1, 2010.

COPLI worked actively with State Bar staff on the initial communication and educational guidance for compliance of this rule and continues to further this charge by incorporating the disclosure issue into educational and program marketing activities.

Revenue

The sponsored insurance program generated \$950,000 in 2014. These funds were used in part to directly support the State Bar's Legal Services Program and the operating budget of the committee.